

**EPA/NOAA Comments on Oregon's
Draft TMDL Internal Management Directive (Version 1.0, June 2, 2011),
Oct./Nov. 2011**

This IMD is clear, concise, and straightforward, which is to its credit. With regard to implementing the New Development MM, it establishes that urban is urban, whether it's a regulated point source (MS4 Phase II Stormwater) or a nonpoint source (NPS). With regard to TMDLs, it says, "Requirements for urban stormwater should be consistent within a given TMDL area for DMAs" (p. 27).

On p. 34 (section 6.4.2), the IMD states: "For urban stormwater DMAs that are not covered under a MS4 permit, the following general stormwater control measure categories should be addressed in Implementation Plans...: It then lists EPA's 6 Minimum Control Measures for Phase II MS4s, including "Post-Construction Stormwater Management in New Development and Redevelopment." EPA and NOAA recommend strengthening and clarifying this section by including a reference to the New Development Management Measure in the 6217(g) guidance, and listing the following specific elements that require...

(1) By design or performance:

- a. After construction has been completed and the site is permanently stabilized, reduce the average annual total suspended solid (TSS) loadings by 80%; or
- b. Reduce the postdevelopment loadings of TSS so that the average annual TSS loadings are no greater than predevelopment levels.

(2) To the extent practicable, maintain postdevelopment peak runoff rate and average volume at levels that are similar to predevelopment levels.

To be consistent, Oregon's TMDL Implementation Plan Guidance should also include this language.

**EPA/NOAA Comments on Oregon's
Draft Guidance for TMDL Implementation Plan Development for
Urban/Rural Residential Land Uses within the Coastal Zone Management Area,
Oct./Nov. 2011**

General Comments:

Oregon is to be applauded for providing such a comprehensive document to assist DMAs in developing TMDL Implementation Plans (IPs). However, its very length may be an obstacle toward the DMAs achieving this goal. Where possible, consider streamlining the material or rearranging it so that detailed sections are shunted to appendices or a supplement so as to not bog down the reader.

The guidance presents a lot of good info, but EPA/NOAA believe there's too much unnecessary background and supporting information for its logic train, making it easy for readers to get "lost in the weeds." EPA/NOAA recommend that the guidance be shortened and simplified for the audience (the DMAs) and **focus** on urban management measures. The DMAs are looking to this guidance to develop their implementation plans. DEQ should focus on what the IPs need to include regarding BMPs to address the required elements of the New Development MM. This is the portion that requires specific details. For example, rather than offering advice to develop an ordinance, provide specific model ordinance language that would meet the bar established by the New Development MM.

Change title to "...within the Coastal Nonpoint Management Area" since the CZM area has a different definition and is smaller than the Coastal Nonpoint Management Area. Here's what OR's CZM area looks like: www.oregon.gov/LCD/OCMP/CstZone_Intro.shtml
Make this change globally. We accept that the map on the cover of the draft guidance is correct.

EPA and NOAA would like to see clear, unambiguous language in the guidance on a necessary element that the implementation strategy must be in conformance with the New Development Management Measure through the adoption of a local ordinance (either an LID ordinance or a SWM ordinance), unless they are already a permitted MS4. The ordinance should be a required element and the draft guidance should include the specific language that must be in the ordinance. It does not need to be long; it just needs to mirror what's in the (g) guidance.

EPA and NOAA support OR DEQ's plan to include a decision tree which would guide DMAs in selecting specific actions needed.

Most of the guidance needs to be scrubbed for typos and improved readability.

Suggestions for specific pages and sections:

Pg 9, Note that the CZMA is not under CZARA for the C.1 heading. Also in the last paragraph on p. 9, it would be helpful to emphasize the required elements of the New Development (g) Management Measure here.

Pg 13/14 (part c)—Make this section more timeless. There's no need to go into detail about how OR has met 13 of 15 urban MMs or the history of CZARA development in this guidance, since this serves no practical purpose for the DMAs.

Pg. 15, 4th paragraph under part c—The guidance states that erosion and sediment control and structural BMPs will achieve 80% TSS reduction required for new development but not all the BMPs listed in the back would achieve 80% TSS. BMPs for erosion and sediment control during construction are not designed to achieve 80% TSS reduction post-development. Given its central role in this guidance, this paragraph is poorly written and confusing, and needs to be rewritten.

Pg. 16.—The guidance recommends a variety of ordinances by category only, but ordinances are only as good as the specifics that they require. Appendix I provides some details, and EPA/NOAA encourage DEQ to expand this to include sample ordinance language or key excerpts from existing ordinances to provide more specific help to DMAs.

Pg. 32—The 2nd paragraph states that a DMA's TMDL Implementation Plan does not address forestry or agricultural land uses. DMAs are only responsible for land use activities under their jurisdiction. EPA and NOAA would like some text here to clarify how implementation plans are supposed to address the Additional Management Measures for Forestry.

Pg. 32 (and elsewhere)—While BMPs are discussed generally here and elsewhere, EPA/NOAA recommend the inclusion of references to specifics provided at the back of this guidance. The recommended BMPs should focus on those that address the elements of the New Development Management Measure (post-development). In many places in this current draft, there seems to be no distinction between these and other BMPS that focus on construction phase BMPs. Or at least, those that do not address the New Development Management Measure (such as construction phase erosion and sediment controls) should be noted as such.

Pg. 36—This page states that TMDL Implementation plans need to only address pollutants in the TMDL. How does this statement fit with language on the top of pg. 24 which says that DMAs that are required to develop TMDL Implementation plans must meet CZARA requirements? These statements appear to be contradictory, so EPA/NOAA recommend that DEQ either provide clarifying language or remove language to clear up the confusion.

Appendix C: Urban Area TMDL Development (Flowchart)—It is unclear whether OR DEQ signs off on every DMA's Implementation Strategy. EPA and NOAA recommend that OR DEQ sign-offs become required for every DMA that's not an MS4.

Appendix D—EPA and NOAA recommend removing the May 12, 2010 letter, as it is likely unnecessary detail for the targeted audience.

Appendix I—(1) The stormwater management ordinance should also mention controlling TSS, not just hydrology. (2) The OSDS ordinance should include language to require inspections at least during property transfer, and to recommend inspections every 3 to 5 years. EPA and NOAA recommend that the guidance provide separate categories of BMPs for construction BMPs versus post-construction BMPs.

Appendix M—The stormwater ordinance should also address 80% TSS control, not just pre- and post-development runoff.